

# WATER LINES

NEWS FROM THE WATER RESOURCES DIVISION  
OF THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

## DEPARTMENT NEWS

### MONTANA LEGISLATURE ACTS ON WATER ISSUES

THE 56TH SESSION OF THE MONTANA LEGISLATURE CAME TO A CLOSE ON WEDNESDAY, APRIL 21, 1999. FOLLOWING ARE SOME OF THE BILLS RELATING TO WATER ISSUES THAT LEGISLATORS PASSED THIS SESSION.

- **HB 51 - Changing a Meeting Date Requirement and the Report Deadline for the Drought Advisory Committee.** The Drought Advisory Committee meets annually to assess moisture conditions and, when appropriate, begins preparing for drought mitigation. The committee has felt that the existing statutory deadlines for these actions were too early in the year. The bill moved the spring meeting from the middle of February to the middle of March and moved the reporting deadline from March 15 to April 15. The Drought Advisory Committee sees these changes as allowing them to better consider last winter's snowpack on the potential for drought. These changes do not prevent the advisory committee, however, from taking earlier action in those years when it is warranted.

- **HB 66 - Estimated Processing Time Listed on Applications for Permits and Licenses.**

- **Water Rights—HB 66** requires state agencies to include, on the application form, the estimated time it will take for the agency to process and act on a correctly completed application. The Water Rights Bureau will be placing the estimated time, based on statutory time frames, on the application forms for Provisional Permit for Completed Stockwater Pit or Reservoir (Form 605), Beneficial Water Use Permit (Form 600), and Authorization to Change (Form 606). Form 605 will have an estimated time of 30 days for processing and acting on a correct and complete application, and Forms 600 and 606 will have an estimated time of 210 days.

- **Dam Safety** — The Dam Safety section will be modifying safety application forms for permitting, operation, and construction of high hazard dams as well as water well licensing forms.

- **HB 95 - A General Revision of the Montana Water Use Act of 1973.** The Montana Water Use Act of 1973 established the water right permitting system. The following is a list of changes to the Montana Water Use Act enacted by HB 95.



- Objectors will be notified of defects in an objection. The objector has 15 days from notification of deficiency to make the objection correct and complete. If not, the objector cannot be a party, and the objection will be terminated. This also clarifies what constitutes a valid objection: (1) the objector has standing, (2) has filed a correct and complete objection within the prescribed time period, and (3) has stated the applicable information as required in the statute.

- Applicant notifications are no longer required to be sent by certified mail. Applicants who have submitted applications which are not correct or complete will be notified by the department of the

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#### DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION — WATER RESOURCES DIVISION

"To provide the most benefit, through the best use, of the state's water resources for the people of Montana."

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deficiency. Applications must be corrected and complete within 30 days of notification of deficiency to keep the date the application was submitted as the priority date. If the application is corrected and complete 31 to 90 days from the date of notification of deficiency, the priority date is changed to the date the application is corrected and complete. All applications not correct and complete within 90 days after notification of deficiency will be terminated.

• **HB 429 - Temporarily Closing Subbasins of the Bitterroot River Basin to New Appropriations.** The bill closes surface water sources in the basin to new appropriations of water.

Like most other basin closures, to this water right closure includes the following exceptions. It does not limit groundwater developments. Surface water appropriations are allowed only for municipal water supply, temporary emergency appropriations, and use of water through new or enhanced storage projects with a capacity of 50-acre feet or more.

This surface water closure is temporary. The closure's termination is tied to the Water Court's development of an enforceable decree for the Bitterroot or its sub-basin watersheds. Once such a decree is completed, basin residents will have two years to evaluate the effects and purpose of the water right closure. The bill's supporters felt that this time period was needed to allow basin residents an opportunity to determine whether they wish to end the closure or to pursue other administrative or legislative options.

• **SB 9 - Removal of Legislative Affirmation of Large-Scale Water Right Changes.** SB 9 removes the need for the legislature to affirm the department's decision on in-state change applications involving 4,000 acre-feet of water a year, 5.5

cubic feet per second, or more to in-state use. This allows the department to process large-scale changes the same as other changes, thus easing timing concerns of the applicant.

• **SB 29 - Removing Obsolete Statutory Directives and Procedures Related to Canal Projects Owned by the Department.** This bill amended Section 85-1-211, MCA which stated that certain state water projects should be transferred by June 30, 1995. All of the listed projects have been transferred. This section was amended to reflect the transfer of these projects, and the existing disposition language for project transfer in general was modified.

• **SB 40 - Removing the Department's Power Sale Restrictions for Power Generated by a State Facility.** This bill amended Section 85-1-509(3), MCA. It stated that the department may not sell power generated at a facility except to a public utility, a rural electric cooperative, or a federal power marketing agency organized in Montana and selling power to Montana customers. This restriction was deleted. The Department can now sell power generated at its Broadwater facility near Toston to any potential buyer.

• **SB 44 - Extending the Allowed Lease Term for State Water Projects Lands Leased to the Department of Fish, Wildlife and Parks for Public Recreational Use; Deleting an Expired Provision of the Cabin Site Leasing Law; Amending Section 85-1-802(2), MCA; Which Stated that All Leases with the Department Will Have a Term of Ten Years.** This bill allows the term of Department of Fish, Wildlife and Parks' campground leases to be extended from 10 years to a maximum of 30 years. Section 85-1-802(3), MCA, which stated that all cabin site leases issued prior to July 1, 1994, expire March 31, 1996, was deleted.

• **SB 98 - Extending for 10 Years the Term of Instream Flow Leasing Program.** The Montana Department of Fish, Wildlife and Parks Instream Flow Leasing Program was set to expire in 1999, and SB 98 has extended the program to June 30, 2009. SB 98 also increased the number of stream reaches that the department could designate where water leasing may occur.

• **SB 371 - Landowner Notification of Proposed Development and Appropriation of Groundwater.** A person who does not have possessory interest in the real property from which groundwater (less than 35 gallons per minute) may be appropriated must notify the owner of the property, in writing, of the intent to appropriate. The notification must be sent at least 30 days prior to constructing or appropriating. Proof of the notification must be provided to DNRC with a correct and complete Notice of Completion of Groundwater Development (Form 602) before a certificate can be issued.

• **SB 468 - Temporarily Closing Clark Fork Basin to New Consumptive Surface Water Appropriations.** This bill created a temporary, two-year closure to the issuance of water use permits in the Clark Fork/Flathead River basin. During this time period, Avista (formally Washington Water Power) has agreed not to call water right holders that are junior to its hydropower water rights and will negotiate with the State of Montana the issue of providing some level of permanent protection to the junior water right holders. Avista owns the largest and potentially controlling water rights in the basin. These are at Cabinet Gorge and Noxon Rapids Dams. Both of the dams are located on the lower portion of the Clark Fork mainstem near the Idaho and Montana state line. This closure terminates on February 28, 2001.

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# STATE WATER PROJECTS BUREAU REHABILITATES PETROLIA RESERVOIR AND TRANSFERS OWNERSHIP

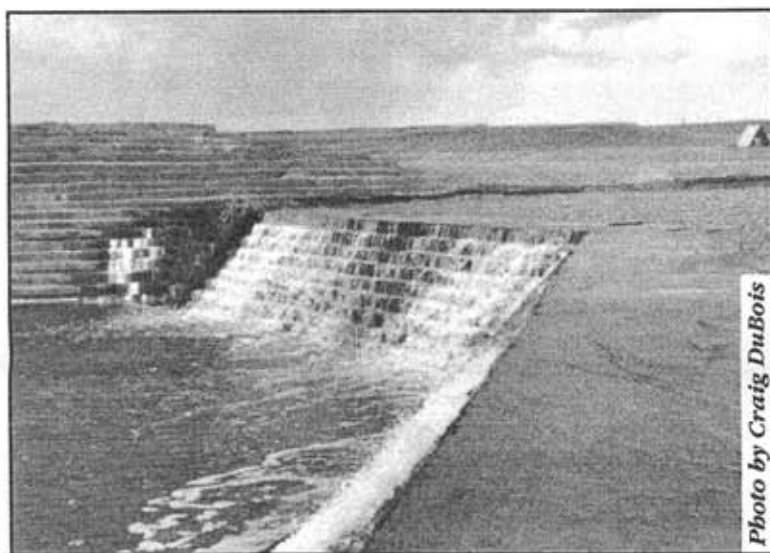
By Tim Kuehn

ON FEBRUARY 25, 1999, THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (DNRC) TRANSFERRED OWNERSHIP OF THE PETROLIA RESERVOIR PROJECT TO THE PETROLIA IRRIGATION DISTRICT. The project, located in Petroleum County, Montana, near the town of Winnett, was constructed in 1951 by the State Water Conservation Board (SWCB) to store water from Flatwillow Creek and provide irrigation water on approximately 2,300 acres of land. The Petrolia Water Users' Association entered into water purchase contracts with the SWCB and managed the daily operation of the project.

In 1966, the SWCB entered into an agreement with the State Fish and Game Commission to expend Land and Water Conservation Funds (LWCF) to improve the recreational facilities at the project. The LWCF agreement required public recreational opportunities in perpetuity and necessitated ownership of the campground by a public entity under Montana law.

In the early 1990s, an inspection revealed that the spillway did not meet the criteria established by the Montana Dam Safety Pro-

gram, and the project was in jeopardy of losing the required operation permit for a high hazard dam. In 1995, the Montana legislature provided funding to rehabilitate the dam contingent upon the water users accepting ownership of the project after rehabilitation. Funding for rehabilitating the spillway was approved in the



Water spilling over RCC Spillway, May 6, 1997.

Photo by Craig DuBois

amounts of a \$1,076,000 grant from the State Special Revenue fund and a \$358,000 loan with a twenty-year term from Conservation and Resource Development Bureau to the water users.

Construction of a new, baffled-apron-drop primary spillway with a roller-compacted concrete guard dike and an earthen auxiliary spillway was completed in 1996 under the direction of DNRC engineer Kurt Hafferman, assisted by regional office engineer Sterling Sundheim. The primary contractor was COP Construction, with MSE-HKM providing the engineering consulting services. Both firms are located in Billings, Montana. The project was rehabilitated under budget

and ahead of schedule.

Negotiations between the department and the Petrolia Irrigation District took place during the rehabilitation and concluded with the signing of the Deed and Agreement to Transfer in February 1999. The former water users' association formed an irrigation district to enhance its revenue collection ability, become eligible to own the campground, and assume an existing federal Farm Service Agency revenue loan. An outstanding balance of approximately \$550,200 will be repaid to the State of Montana in annual payments by the district. The Agreement to Transfer protects historical public access and recreational opportunities in perpetuity. Governor Marc Racicot applauded the cooperative efforts of the department and the district as "complex, but very worthwhile effort."

*(Continued from page 2)*

Essentially, the bill maintains the relative status of water use in the Clark Fork basin during the two-year negotiation process. In this instance, the Clark Fork basin is defined as the entire river drainage area within Montana above Noxon Rapids Dam including the Flathead River and all tributaries, the Bitterroot River, the Big Blackfoot River, and the entire Clark Fork River and all its tributaries. This bill recognizes the basin's existing legislative and administrative water right closures. All such closures take precedence over SB 468. The legislation exempts groundwater and surface water appropriations for domestic, stock, and municipal uses or for temporary emergency appropriations.

# APRIL GOES OUT LIKE A LION

By Jesse Aber

**T**HE GOVERNOR'S REPORT ON THE POTENTIAL FOR DROUGHT IN 1999 WAS RELEASED APRIL 23, FOLLOWING A TWO-DAY PRECIPITATION EVENT THAT BROUGHT SOME MUCH-NEEDED MOISTURE TO MONTANA'S VALLEYS AND PRAIRIES. The report had concluded that this year the potential for drought across Montana, through July, was low. After all, the experts had painted a bright outlook at the April 16 Drought Committee meeting, reporting that the mountains had received above average moisture, the reservoirs were in good shape, runoff to streams would be at least average, and soil moisture was average statewide, except for some dry pockets here and there, including Montana's Golden Triangle grain country.

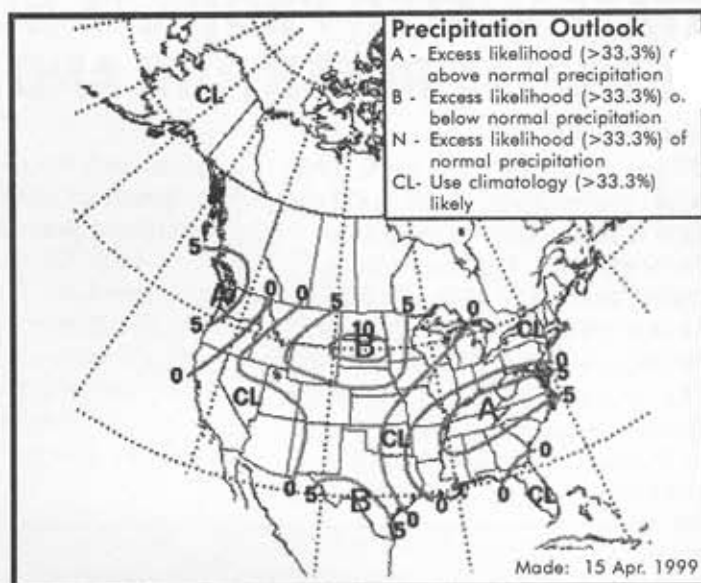
While the mountain snowpack had soared, precipitation had been conspicuously absent from valleys and lower mountain elevations all winter. What little snow that had accumulated in the lower elevations melted in the 70-degree temperatures of the third week of March. February and March had been very dry in valleys on both sides of the divide. The grass fire season was well underway by the second week of April, and the Montana Agricultural Statistics Service's April 18 *Crop-Weather Report* showed all zeros in the "Precipitation - Past Week" column for all seven climate divisions of the state.

Since October 1, 1998, Conrad, Cut Bank, Chester, Great Falls, and Helena were hovering around 50 percent of normal precipitation. Six and one-half months had gone by with only about 2 inches of moisture for these towns. A windy and mild, open winter had depleted what soil moisture remained from summer 1998. Other places had been dry as well, including Red Lodge, Columbus, Belgrade, Missoula, Polson, Drummond, and Anaconda. This was April in Montana, when, according to the Montana Climate Atlas, "precipita-

tion increases greatly east of the divide and in the valleys west of the divide." The atlas continues, "Drought years are notably linked with the failure of these early season storms."

Soil moisture figures continued to decline, and conversations with grain growers in parts of the Golden Triangle wheat region indicated that they were getting nervous. Now came the annual and sometimes agonizing wait for rain that generations of dryland farmers have endured in Montana since before the turn of the century. Just last year, the wheat emerged, only to wilt and die, or at best produce some meager kernels, before the rains arrived in June, which was, in many cases, too late. Now, it would take bigger weather systems with more energy and easterly upslope movement before the plains at the foot of the Front Range would get the precious moisture they so badly needed.

A moist system arrived from the south April 22, drenching Wyoming and providing Montana valley locations on both sides of the divide with some moisture. Hardin and Harlowton received .25 inch, Choteau and Conrad .333 inch, and some areas along the Front Range, like Valier, .40 inch. By April 23, Bozeman was at 1.68 inches for the month, and Roundup was close to 1.5 inches. For the period of April 1 - 22, the southeast was now at 213 percent of normal, with the southcentral, northeast, and central climate divisions almost or at normal levels of moisture. The area of Montana west of the divide, however, was only 28 percent of normal.



Finally, on April 28, another large dose of energized moisture streaked its way north from the Gulf of California. A light drizzle in Helena Wednesday morning developed into big, soft snowflakes by noon. Helenans awoke Thursday morning to five to eight inches of the wet, heavy stuff. Soon the reports rolled in from the National Weather Service: Billings .72 inch, Lewistown .69, Great Falls .32, Helena .25, Red Lodge 2.30 inches, Lima .58, Chester .30, Conrad .32, Choteau .31, Grassrange .75, Fort Benton .46, White Sulfur Springs .90, and on. The triangle is not yet out of the woods, but is looking much better.

In Montana, it seems we're always on the edge of our seats until the first three-day soaker shows up. Friday night was sure to be a good night at many a rural corner watering hole across the heartland of our state. So, once again, if you don't find the weather to your likin' in Montana - why, just stick around a bit; it's sure to change. Oh, and don't forget - the probability for drought this season in Montana, at least through July, is low.

Note: *The Governor's Report on the Potential for Drought in Montana, 1999* can be found on the DNRC Internet home page at: <http://www.dnrc.mt.gov/>



# WATER RIGHT OWNERSHIP UPDATES

THE 1997 LEGISLATURE PASSED HOUSE BILL 506, COMMONLY KNOWN AS THE WATER RIGHT DISCLOSURE BILL, AND IT BECAME EFFECTIVE JANUARY 1, 1998. This legislation was viewed as a modest step towards increasing compliance with the requirement to properly update DNRC's water right ownership records. Now that we have a full year's experience with this water right disclosure requirement, we want to report how it's going. The following

graph displays the number of Ownership Update (transfer) forms we received statewide during each of the past three years and the percentage of increase over the previous year.

During 1996, the Water Rights Program received 2,626 transfer forms, compared to 4,438 in 1998. The first year HB 506 was in effect in 1998 and thus, that year was the first opportunity to feel its presence. The number of Ownership

Update (transfer) forms received in 1998 shows an impressive increase over the previous year, and the trend seems to be continuing into 1999.

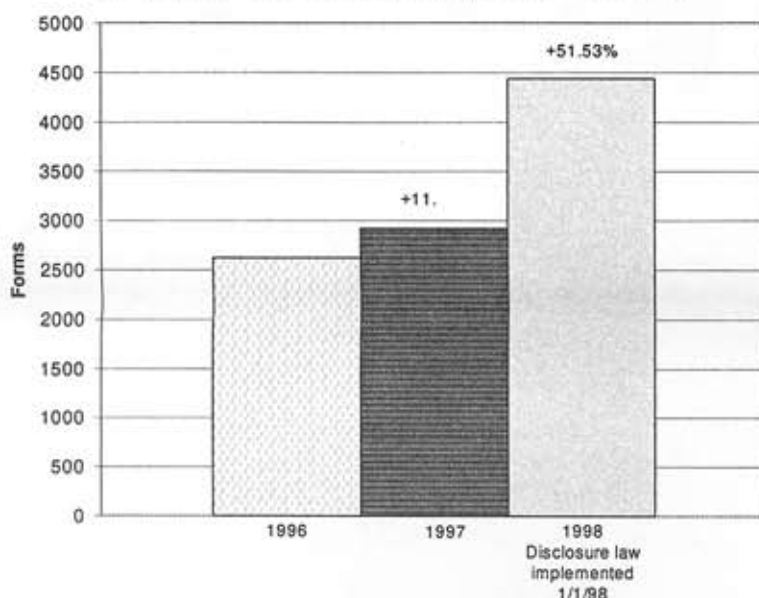
It appears that this legislation brought attention to the issue of updating water right ownership when property changes hands. We commend those associated industries (including the Land Title Association, various real estate groups and associations, and the Clerks and Recorders) for the educational efforts that were made in this area. What seemed like a modest proposal has had great results!

Although these figures are impressive, recent mailings have reminded us that we have a long way to go before we can rely on our data with confidence. However, every journey begins with one step.

## Reminder:

When property changes hands, remember to update DNRC water right ownership records. Ownership update forms are the "pink" copy of the Realty Transfer Certificate (RTC) and are available at DNRC regional offices, title companies, and real estate offices. ☪

Ownership Update (Transfer) Forms Received



## NEW FLOOD MITIGATION ASSISTANCE PROGRAM

by Karl Christians

KARL CHRISTIANS, FLOODPLAIN MANAGEMENT PROGRAM MANAGER, IS ADMINISTERING A NEW FLOOD MITIGATION ASSISTANCE PROGRAM (FMAP). The Federal Emergency Management Agency allocates (1) approximately \$100,000 annually to the DNRC for project grants to assist individuals in mitigating their residences from flooding, and (2) about \$10,000 annually for planning grants. The FMAP funds are generated from a portion of flood insurance premiums under the National Flood Insurance Program.

Park County and Lincoln County, project sponsors, applied for and received grants to relocate or elevate structures from flooding. Park County elevated one structure and is flood-proofing another structure with a floodwall. Both structures had been previously flooded and have had approximately \$20,000 worth of flood damage both in 1996 and 1997.

Lewis and Clark County and the DNRC Floodplain Program

both applied for and received planning grants. Lewis and Clark County developed a countywide Flood Hazard Mitigation Plan, and the DNRC developed a *Guide and Workbook for Local Officials on How to Write a Flood Hazard Mitigation Plan*.

The FMAP will be an annual program, and the application deadline for the federal Fiscal Year 2000 will be the end of January. Feel free to contact Karl at 406-444-6654 for more information. ☪

# REP. HAL HARPER: LONG SERVICE TO MONTANA'S WATERS

**R**EP. HAL HARPER WAS BORN IN NASHVILLE, TENNESSEE, BUT MOVED TO MONTANA WHEN HE WAS 4 YEARS OLD. He began attending Helena-area schools when he was in the sixth grade and later attended Rocky Mountain College in Billings and the University of Montana in Missoula, where he received a BA in Philosophy.

He entered the legislature in 1973 and, due to term limits, cannot seek re-election to the House next session. During his long tenure he chaired the House Natural Resources Committee and interim Water Policy Committee. He also served as Democratic floor leader in 1985, majority leader in 1989, and speaker of the House of Representatives in 1991.

Natural resource and water issues have occupied much of Rep. Harper's attention. Legislation successfully sponsored by Rep. Harper includes the River Restoration Act, Noxious Weed Trust Fund, Environmental Quality Protection, Hazardous Waste Facilities Siting,

Comprehensive Drought Monitoring and Response and formation of Drought Advisory Council. He has also been an active sponsor of bills relating to economic development.

Rep. Harper carried two successful water-related bills in this session. HB 51 revises the drought advisory meeting date and report deadline, and HB 626 expands the authority of the Fish, Wildlife and Parks Commission to protect resources and regulate conflicts on Montana waters, expands safety distances for water craft, and limits use of personalized water craft. Along with Rep. Karl Ohs, Rep. Harper also drafted and co-sponsored HB 458, which requires the Environmental Quality



*Rep. Hal Harper*

Council to coordinate and disseminate information about best management practices for streamside corridors and riparian areas.

In past sessions, Rep. Harper played a big part in passing other legislation addressing the spread of whirling disease, the illegal introduction of fish species, the loss of agricultural riverbank land to development, the creation of local river basin commissions, regulating out-of-state sale of water, and chronically dewatered streams.

Rep. Harper has received the following awards: Montana Environmental Health Association Distinguished Service in Environmental Health (1983); AARP Outstanding Contributions (1987); American Fisheries Society Conservation Achievement Award (1994); Humane Society St. Francis Award (1997); and the Trout Unlimited Mancinelli Conservation Award (1997).

Rep. Harper currently lives in Helena with his wife, Janet.

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